

## Responsiveness Summary

### Bustorf Dairy-CAFO – Draft Permit No. MI0058479

The National Pollutant Discharge Elimination System (NPDES) permit was denied on June 30, 2008 (copy of Denial Document attached). An NPDES permit may be contested within 60 days of denial by filing a petition for Contested Case Hearing with the Department of Labor and Economic Growth's Office of Administrative Hearings. A petition may be obtained from the Internet.

The public hearing was attended by about 80 people. Approximately 34 people provided oral statements during the hearing. Among the speakers were State Representative Rick Schaffer, Leonidas Township officials, local citizens, and nearby property owners. Most statements were in objection to issuance of the permit.

Below is a summary of the significant, relevant issues received during the public notice period and at the Public Hearing regarding the Antidegradation Statement and issuance of the Bustorf Dairy-CAFO NPDES Permit. In preparing this summary, actual comment language may have been abbreviated, paraphrased, and/or edited for clarity. Similar comments were combined into one comment. Some comments were received regarding matters that were not within the regulatory authority of the Department of Environmental Quality (DEQ) to directly consider in the decision of whether to issue an NPDES permit, including the effect of the proposed Concentrated Animal Feeding Operation (CAFO) on property values and the existing roads. However, all matters were considered as part of the decision on the Antidegradation Determination. The DEQ, Water Bureau (WB) staff's responses follow the comments and are bolded.

#### **Comments Related to Land Application**

Comment: Waste will be land applied within the Nottawaseppi Indian Reservation boundary.

**Response: If a permit were to be issued, then the permittee may apply waste to any lands where it obtains permission from the land owner and where the permittee can meet permit conditions.**

Comment: The application states that the dairy is 829 acres short of the needed acreage. Additional acreage is likely not available due to MARI, slope, soil phosphorus levels, and land owners who do not want their land used for manure disposal. The permit must not be issued until the applicant has verified that they have sufficient land for application of all of the manure that will be generated. The application is incomplete until that information is supplied. Use of each parcel must be verified with the land owner, not just the renter.

**Response: If a permit were issued, permit conditions regarding land application would need to be met on all land used for the application of manure. Compliance with those permit conditions does not depend on a specific amount of acreage. CAFO permittees must have access to sufficient land to meet permit requirements.**

#### **Comments Related to Receiving Waters and Designated Uses**

Comment: Parts of Nottawa Creek are subject to eutrophication during the summer. CAFO waste nutrients will exacerbate this problem.

**Response: If a permit were to be issued, then permit conditions would prevent the discharge of nutrients at levels that will cause or contribute to violations of water quality standards, including those conditions that may be characterized as "eutrophication," such as low dissolved oxygen levels and high nutrient levels.**

Comment: Nottawa & Bear Creek are used for agricultural water supplies. Any discharge of CAFO waste would negatively affect those water supplies and could result in pathogens on crops destined for human consumption.

**Response: If a permit were to be issued, then permit conditions would protect surface waters for agricultural uses.**

Comment: There is a high likelihood that populations of state- and federally-protected plants, animals, and fish exist in the waterways downstream of the proposed CAFO. The DEQ must determine if any protected species are present and how they may be impacted by the proposed CAFO prior to issuance of the permit.

**Response: If a permit were to be issued, then permit conditions would protect surface waters for indigenous aquatic life and wildlife.**

Comment: The DEQ must require an environmental impact study and a natural features inventory prior to permit issuance. Certain endangered or threatened mussel species have been documented in Nottawa Creek.

**Response: The DEQ does not have the legal authority to require this. If a permit were to be issued, then permit conditions would protect surface waters for indigenous aquatic life and wildlife.**

#### **Comments Related to the Production Area**

Comment: The 6 percent slope of the property at the production area increases the likelihood of a discharge due to clay soils and tiled fields that will accelerate runoff.

**Response: If a permit were to be issued, then the land at the production area would likely be leveled as part of the construction process.**

Comment: The application states that the dairy will have 2,260 cows, but the permit allows for 3,230 cows. This is to allow smaller storage structures.

**Response: If a permit were to be issued, then the permit would not specify a number of cows. The application is for 2,260 dairy cows. Storage size is based on the amount of waste generated in a six-month period. It is not based on a specific number of animals. If a permitted CAFO wishes to expand, they would need to amend their application and increase storage volume prior to or concurrent with the expansion.**

Comment: There is a high water table in the area where the CAFO will be located. Many residents have shallow wells that will be at a high risk of contamination due to spills, leaks, or land application activities. Contaminated groundwater can also move to surface waters via tiles or natural flow. This same groundwater is the "headwaters" for the St. Joseph River watershed.

**Response: If a permit were to be issued, then the permit would not allow discharges to groundwater. Contaminating the groundwater would be a violation of state rules.**

#### **Comments Related to Antidegradation**

**Note: A complete response follows all of the comments on the Antidegradation Statement.**

Comment: The Antidegradation Statement states that the CAFO will increase the use of local goods and services, including feed and crop services, veterinarian services, and maintenance and repair services. Statistics provided by the applicant show that 8.9 percent of the workforce in Leonidas Township engages in agriculture, 2.3 percent in transportation, and 2.9 percent in scientific services. This indicates that the projected increase in local goods and services is not likely to occur and that revenue from the farm will not stay in the area. What verification is there that feed will be bought locally and not shipped in from outside sources?

**Response: There is not a requirement that feed be purchased locally.**

Comment: The applicant must be required to identify current water quality conditions in potential receiving waters in order to show they will not be degraded. Also, the Antidegradation Statement does not specify if any Bioaccumulative Chemicals of Concern (BCCs) will be generated or if any of the potential receiving waters are high-quality water bodies. The Antidegradation Statement is incomplete until these issues are addressed.

**Response: Rule 323.1098, Antidegradation, does not require that current water quality conditions, including whether they are “high-quality waters,” be identified by the applicant. BCCs must be identified if they are present. By not identifying any BCCs, the applicant is saying they are not present.**

Comment: The Antidegradation Statement states that the CAFO will provide a long-term stable market for local crops, yet the application states that the CAFO will grow its own feed on 250 acres, which provides no benefit to local farmers.

**Response: The application is not clear in saying if all of the feed required by the CAFO will be grown on the 250 acres.**

Comment: Expensive road repairs and noise, dust, odors, and emissions will be caused by 4,700 truck trips per year.

Comment: The CAFO will not be an important economic development of the area. The July 2001 issue of Appraisal Journal stated that CAFOs have a negative economic impact on property values, and will diminish citizens' use and enjoyment rights and violate their right of exclusion.

Comment: A University of Missouri study showed that after several decades, not a single community where CAFOs represent a significant segment of the local economy is looked upon today as enjoying economic success or prosperity. This shows that the Bustorf Dairy Antidegradation statements are false.

Comment: The Antidegradation Statement cites the median family income of \$47,321 for Leonidas Township and claims Bustorf Dairy will employ 30 – 35 persons; however, based on comments by a company representative, there may only be 20 – 25 employees. It is doubtful that the rate of pay for the CAFO workers will maintain the economic prosperity of the area.

Comment: The Antidegradation Statement lists repair and maintenance services as a benefit. Repair and maintenance of local roads will be an expense to local taxpayers and is not a benefit to the local community.

Comment: The Antidegradation Statement says that the CAFO will create jobs indirectly at dairy processing plants, grocery stores, trucking companies, and equipment dealers, but does not identify that any of these services are offered in the area.

Comment: Sixty-six percent of the Leonidas population is employed in manufacturing; educational, health, and social services; and retail trade. None of these will be influenced by the presence of a CAFO.

Comment: The Antidegradation Statement says the presence of the CAFO will preserve rural character, open space, and wildlife habitat. This is not true. The presence of the CAFO will generate thousands of tanker trips hauling manure, which will destroy the rural character of the area.

Comment: The local economy is supported by retirees and second home buyers who purchase property on local lakes and rivers. A major part of the attraction to the area is the pastoral setting of our farm land. CAFOs are detrimental to this attraction.

Comment: Several county organizations are developing a linear park along Nottawa Creek; Nottawa Creek is part of the Michigan Heritage Water Trails system. The proposed CAFO is a threat to the economic benefits associated with the tourism that the park and trail bring to the area.

Comment: If the Antidegradation Statement is accurate, there should be ample evidence where other CAFOs have had a positive impact on a local community. Research and facts can be produced that show the opposite result.

Comment: The CAFO will consolidate dairy operations, putting smaller family farms into unemployment. The few low-wage, unskilled jobs a CAFO will produce do not justify the loss to business and property owners.

Comment: The Pew report states that property values around CAFOs are reduced.

**Response to all of the above comments: The DEQ considered these comments as an indication of the community's position on the validity of assertions by the applicant and whether the proposal would provide important social or economic benefits to the area.**

**The applicant provided an Antidegradation Statement listing several assertions that they state will be benefits to the local community.**

**1. Assertion: The farm will employ approximately 30-35 people for the day-to-day operation of the farm. This equates to greater than a 5 percent increase in employment in the area.**

**Comments: There was dispute regarding the number of employees and the value of the jobs created. The township felt there would only be 20 – 25 people employed, which is a 2.8 percent increase. These jobs would be low-paying and primarily filled by migrant workers, thus lowering the importance of these jobs to the local community. This will lower the median wage level in the township and replace higher-paying jobs and family income at smaller farms.**

**2. Assertion: Bustorf Dairy creates jobs indirectly at dairy processing plants, grocery stores, trucking companies, and equipment dealers.**

**Comments: The demonstration fails to mention any of these services that are currently offered in the area. There will be no influence on the existing businesses in the township because goods and services required by the dairy are not available locally.**

**3. Assertion: The farm will provide a long-term stable market for local crops to be used as feed for the animals. This will help the area keep a rural character and will preserve open spaces and wildlife habitat.**

**Comments: This was vigorously disputed by the township and at least seven other commentators, representing local business, residents, Republicans for Environmental Protection, a WMU professor, and the Huron Potawatomi Tribe. There is no documentation provided to support the claims. Hauling the large amount of manure over the township's roads will damage the rural character. Other CAFOs have caused extensive problems with township roads. The township is primarily second homes and retirees, who will see a decline in property values. This will be detrimental to the sustainable tourism market in the area.**

**4. Assertion: The farm will pay taxes to local and state governments.**

**Comments: Payment of taxes is a legal requirement, not a benefit. The reduction of property values will cause a loss of taxes. Truck traffic generated by the CAFO will cause additional expense for road maintenance to local governments.**

**5. Assertion: The farm will provide manure for other farms to use as fertilizer.**

**Comments: Hauling the manure will cause severe impacts to the township roads. The extensive spreading of manure will reduce property values. This will be detrimental to the local economy of second homes and retirees. This will be detrimental to the sustainable tourism being developed in the township.**

#### **Conclusion:**

**Considerable weight is given to the comments provided by the township. These comments provide information that demonstrates there is considerable disagreement on the validity of the assertions made by the applicant. The comments of the township, representing the residents of the community surrounding the project, clearly show that the township does not consider the demonstration to show that there are important social or economic benefits from this operation.**

**This is further supported by the comments provided by the residents, local business, WMU professor, Republicans for Environmental Protection, and the Huron Potawatomi Tribe. These comments serve to bolster the claims made by the local unit of government, and demonstrate that they represent a considerable portion of the area.**

#### **Miscellaneous Comments**

**Comment: Waterways downstream of Bustorf Dairy are part of the Michigan Heritage Water Trails. This has increased boating and tourism. CAFO pollutants in the waterways pose health risks for persons who contact the water.**

**Response: If a permit were to be issued, then permit conditions would protect surface waters for partial body contact year round, and full body contact May through October.**

**Comment: The Huron Potawatomi Tribe requests a formal consultation with the DEQ.**

**Response: The DEQ is willing to meet with the Tribe.**

**Comment: The DEQ must uphold its Vision Statement by denying this permit.**

**Response: The Vision Statement helps define the DEQ's purpose in terms of values rather than bottom-line measures. It gives direction about how employees are expected to behave, the attitude they should have toward their everyday work, and inspires them to give their best.**

**Comment: The DEQ's comments to the United States Environmental Protection Agency state that virtually all CAFOs have discharges. These discharges create a risk to public health, water resources, and protected species.**

**Response: The DEQ's comments refer to the likelihood that CAFOs without permits will discharge. The DEQ believes that a properly-operated CAFO that is in full compliance with its Michigan CAFO permit will not have illegal discharges.**

**Comment: The permit should be denied under the Americans with Disabilities Act due to lung, breathing, and other health problems of several nearby residents.**

**Response: The Act does not provide for permit denial on that basis.**

Comment: The adjacent property owners list is incomplete and missing many owners.

**Response: The adjacent property owners list is not currently used by the DEQ. It is the applicant's responsibility to provide accurate information. The DEQ does not have the resources to verify the adjacent property owners listed in all permit applications. If we need to use the adjacent property owners list, we will request additional information from the applicant.**

Comment: According to the Washington Post, most of the European farmers recruited by Vreba-Hoff have much smaller pasture-based operations and are ill-equipped to operate large CAFO operations. This will result in environmental contamination problems.

**Response: Vreba Hoff claims to train operator-owners on how to properly run a CAFO and to provide ongoing support.**

Comment: Vreba-Hoff has an appalling environmental record in all the states in which it conducts business. The same can be expected at the Bustorf Dairy. The permit must not be issued until all Vreba-Hoff facilities are in compliance.

**Response: The DEQ does not have the legal authority to require this.**

Comment: Antibacterial agents used at dairies may cause the development of resistant bacteria which may end up in the groundwater or surface water.

**Response: The issue of the evolution of resistant bacteria in response to the use of antibiotics requires additional study before antibiotic use can be regulated.**

Comment: Vreba-Hoff has a history of noncompliance. Taking enforcement action after a discharge will not undo the discharge and the damage it causes.

**Response: The DEQ does not disagree with this statement.**

Comment: The land application of manure has caused an increase of nitrates in groundwater as shown by tests of a residential well. Another CAFO will just make it worse.

**Response: If a permit were to be issued, then the permit would not allow discharges to groundwater. Contaminating the groundwater would be a violation of state rules.**

Prepared on June 29, 2008, by Mike Bitondo, Permits Section, WB, DEQ